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FIRE INSURANCE COMPANY and GOLDEN EAGLE INSURANCE  
CORPORATION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SHAW MORTGAGE  
CORPORATION dba  
PATIOSOURCE & THE NATURAL  
TOUCH, a California Corporation

Plaintiffs,

v.

PEERLESS INSURANCE  
COMPANY, a New Hampshire  
Company; GOLDEN EAGLE  
INSURANCE CORPORATION, a  
California Corporation; LIBERTY  
MUTUAL INSURANCE COMPANY,  
a Massachusetts Company; and DOES  
1 – 20, inclusive,

Defendants.

CASE NO.: 08 CV 0709 BTM AJB

SDSC Case No. 37-2007-00084451-CU-BC-  
CTL

**NOTICE OF MOTION AND MOTION  
TO DISMISS PLAINTIFFS’  
COMPLAINT PURSUANT TO  
FEDERAL RULE OF CIVIL  
PROCEDURE 12(b)(6);  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF; DECLARATION OF  
DALE A. AMATO**

**[Per Chambers, no oral argument  
unless requested by the Court.]**

**DATE: 6-6-08  
TIME: 11:00 a.m.  
COURTROOM: 15**

Date Complaint Filed: 12/21/2007

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on June 6, 2008, or as soon thereafter as the matter  
may be heard at the above-captioned court, located at 880 Front Street, San Diego,  
California, 92101, Defendant Liberty Mutual Insurance Company (“LMIC”) will move

1 this court to dismiss Plaintiff's First Amended Complaint against it pursuant to Rule  
2 12(b)(6) of the Federal Rules of Civil Procedure, on the following grounds:

- 3 • The First Claim for Breach of Contract fails to state a claim upon which  
4 relief can be granted against LMIC;
- 5 • The Second Claim for Breach of the Implied Covenant of Good Faith and  
6 Fair Dealing fails to state a claim upon which relief can be granted against  
7 LMIC; and
- 8 • The Third Claim for Declaratory Relief fails to state a claim upon which  
9 relief can be granted against LMIC.

10 This Motion is based upon this Notice of Motion, the accompanying  
11 Memorandum of Points and Authorities, the entire court file in this matter, and on such  
12 other argument and evidence that may be presented at the hearing on this Motion.

13  
14 DATED: April 18, 2008

BERGER KAHN  
A Law Corporation

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16 By: S/Dale A. Amato  
17 DALE A. AMATO  
18 Attorneys for PEERLESS  
19 INSURANCE COMPANY, LIBERTY  
20 MUTUAL FIRE INSURANCE  
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